



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bauer Compressors, Inc.

File: B-244580

Date: July 2, 1991

W.E. Hutcheson for the protester.
Scott H. Riback, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest filed at the General Accounting Office more than 10 days after initial decision denying agency-level protest is dismissed as untimely; protester's continued pursuit of protest with the agency does not toll timeliness requirements.

DECISION

Bauer Compressors, Inc. protests the terms of invitation for bids (IFB) No. DAHA12-91-B-0100, issued by the National Guard to acquire a mobile air charger.

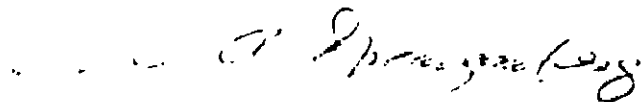
We dismiss the protest.

On May 3, 1991, the IFB was issued and, as amended, called for the submission of bids by June 10. On May 15, the protester filed an agency-level protest with the contracting officer in which it alleged that various improprieties existed in the IFB specifications. By letter dated May 28, the contracting officer denied Bauer's protest. Thereafter, on June 4, Bauer again wrote to the agency raising the same allegations that it had raised in its May 15 letter; the contracting officer responded to this letter on June 14 stating that his previous letter was the agency's final position on the matter. By letter dated June 19 (and received June 24), Bauer protested to our Office.

Where, as here, a protest is first filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. See 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(3)); Tecniventas, S.A.--Recon., B-240323.2, Oct. 19, 1990, 90-2 CPD ¶ 320. In this case, the contracting officer's May 28 letter constituted initial adverse agency action. Accordingly, the 10-day period began to run when Bauer

received the May 28 letter. The fact that Bauer pursued an agency-level reconsideration action before filing its protest with our Office did not toll our timeliness requirements; once informed of the initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the protest with the agency. Id. Since Bauer did not file its protest with our Office within 10 days of the agency's denial of its protest, its protest to this Office is untimely.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel